

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of INDIA MASSEY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CALVERT MASSEY,

Respondent-Appellant.

UNPUBLISHED
November 7, 2006

No. 269778
Genesee Circuit Court
Family Division
LC No. 04-118360-NA

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights under MCL 712A.19b(3)(g), (h), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent was convicted in October 2005 of the first-degree murder of Alicia Jones-Blade and sentenced to life in prison. Respondent was also arrested that same month and charged with the previously unsolved 1999 murder of his wife, Iris Massey, who was the child's mother. After the murder of her mother, the child lived with respondent and then with her paternal grandmother. Because the child's mother was dead, and because respondent was serving a life sentence, petitioner filed a petition alleging that respondent neglected to provide proper or necessary care for the child. A jury found that one or more of the statutory grounds alleged in the petition had been met, establishing the court's jurisdiction over the child.

Respondent does not argue that the statutory grounds for termination were not established. Rather, respondent contends that the trial court clearly erred in terminating his parental rights because it was not in the child's best interests to do so. The termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo, Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the child. *Id.* at 353.

Respondent relies on the fact that the child testified that she wanted to have contact with her paternal relatives. Numerous relatives testified that respondent was a good father and loved his daughter. However, the fact remained that respondent was serving a life sentence for one

murder and had also been charged with the murder of the child's mother. The foster care worker testified that, when the child was taken to the jail by the paternal grandmother to visit respondent, the child was told not to speak with her maternal relatives. In addition, there was testimony that, after the mother's death, the child was not allowed to grieve. Respondent's conduct toward his daughter after the death of the mother was emotionally harmful to the child. Such evidence did not demonstrate that termination of respondent's parental rights was clearly not in the child's best interests. Therefore, the trial court did not clearly err in terminating respondent's parental rights.

Respondent also argues that the prosecutor's rebuttal argument in the jurisdiction trial was not supported by the evidence. We review claims of prosecutorial misconduct to determine whether the defendant was denied a fair and impartial trial. *People v Rodriguez*, 251 Mich App 10, 29; 650 NW2d 96 (2002). However, respondent failed to object to the challenged statements, and appellate review of improper prosecutorial remarks is generally precluded absent objection by counsel because the trial court is otherwise deprived of an opportunity to cure the error. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). An exception does exist, however, if a curative instruction could not have eliminated the prejudicial effect or where failure to consider the issue would result in a miscarriage of justice. *Id.*

During the prosecutor's rebuttal argument, she stated that respondent murdered his wife in front of the child, which put the child's mental well-being at risk. A prosecutor may not make a statement of fact to the jury that is not supported by the evidence. *Id.* at 686. There was no evidence that respondent murdered his wife. There was evidence that respondent was arrested for the murder of his wife, but had not yet gone to trial. Therefore, the prosecutor's remarks were unsupported and improper. However, no error requiring reversal will be found if the prejudicial effect of the prosecutor's comment could have been eliminated by a curative instruction. *People v Green*, 228 Mich App 684, 693; 580 NW2d 444 (1998). Because any unfair prejudice produced by the challenged comments would have been cured by the trial court's careful and explicit instructions to the jury that it was required to decide the case on the evidence alone and that the lawyer's statements were not evidence, respondent is not entitled to relief with respect to this issue.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens